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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Section 19 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

CS Docket No. 94-48

Annual Assessment of the Status of)
Competition in the Market for the)
Delivery of Video Programming)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF
SOUTHERN SATELLITE SYSTEMS, INC.

Southern Satellite Systems, Inc. ("Southern")
submits these reply comments in response to the Comments of
Consumer Satellite Systems, Inc., Programmers Clearing House,
Inc., and Satellite Receivers, Ltd. ("CSS, et al.") in this
proceeding. Although the record confirms that alternative
technologies are receiving non-discriminatory access to pro-
gramming, CSS, et al. attempt to use this proceeding as a
forum to seek reconsideration of prior Commission decisions
and to present ex parte comments on contemplated complaint
proceedings offering unsupported and previously rejected
assertions.

After the Commission adopted 47 C.F.R. §76.1000,
et seq., and based upon the guidance provided by the Commis-
sion in its First Report and Order, MM Docket No. 92-265, 8
FCC Rcd. 3359 (1993) ("Report and Order"), Southern reviewed
its contracts with HSD packagers such as CSS, et al. Although

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Southern does not believe that its original rates were discriminatory or denied access to programming, in order to ensure compliance with the Commission's Rules and to avoid any potential for dispute, Southern revised its contract terms and conditions and significantly reduced its prices to such HSD packagers, including CSS, et al., which negotiated and accepted the resulting prices, terms and conditions without objection. Now, CSS, et al. apparently have reconsidered their acceptance of such contracts and "are planning to bring a number of program pricing cases to the Commission within the next several weeks." CSS, et al. Comments at 4.

As a prelude to their complaints, CSS, et al. make a series of unsupported and inaccurate assertions. Thus, after correctly acknowledging that "[t]he nature of the HSD market is fundamentally different from the cable market," they proceed to ignore those differences in their generalized claims of discrimination. CSS, et al. Comments at 5. As the Commission concluded based on the extensive record before it in MM Docket No. 92-265, in which CSS actively participated:

[A]s detailed below, the record reveals that distributors will have distinguishing attributes based upon the technology they employ, the number of subscribers they serve, and their ability and willingness to provide various secondary transactions and services to the vendor in exchange for programming.

Report and Order at ¶103. The comments of CSS, et al. only confirm their "distinguishing attributes" and differences from

other facilities-based distributors such as cable, SMATV, MMDS, and DBS operators.

Again, based on its review of the extensive factual record before it, the Commission concluded that, among other things, differences in the services provided by programmers, offering of service by HSD packagers, and costs may justify differences in the price, terms and conditions to HSD packagers:

Differences In Services Provided By Programmers

The statute also directs that our regulations should allow price differentials based on differences in "offering of service." Neither the statute nor its legislative history provides much guidance on the proper definition of this term, although we believe that it refers to differences related to the actual service exchanged between the vendor and the distributor.

Report and Order at ¶110 (emphasis added).

Differences In Offering Of Service By HSD Packagers

[W]e adopt regulations that will allow programming vendors to establish price differentials based on factors related to offering of service. Such factors could include, for example, penetration of programming to subscribers or to particular systems;...a distributor's purchase of programming in a package or a la carte;...contract duration....

Report and Order at ¶111 (notes omitted).

Cost Differences

We agree with those commenters suggesting that the record in this proceeding supports the preliminary conclusion in the Notice that service to HSD distributors may be more costly than service to others using different delivery systems such as cable operators, as additional costs are often incurred for advertising expenses, copyright fees, customer service, DBS Authorization Center charges and signal security. The record indicates that these cost differences are particularly evident when providing program services to HSD distributors who do not provide a complete distribution path to individual subscribers.

Report and Order at ¶106 (notes omitted).

CSS, et al. also urge the Commission "to call for the presentation of extensive pricing data from all programming vendors." CSS, et al. Comments at 6. Again, the Commission already expressly has considered and correctly rejected a request for substantially less detailed pricing information.¹ In addition to the burden of such collection on both the Commission and programmers, the Commission recognized that, although informative, "disclosure of such data, even in aggregate form, could hinder competition in the industry."

Report and Order at ¶158.

Finally, CSS, et al. request that the Commission adopt ultra vires remedies, including damages and retroactive rate rollbacks, in order to provide "an adequate incentive" to

¹ The Commission sought comment on whether it should collect data regarding "the levels of pricing differentials for programming, including the range and average of volume-related discounts and other permissible differentials." Report and Order at ¶157.

programmers to comply with the Commission's Rules.² CSS, et al. Comments at 6. However, the comments of CSS, et al. confirm that, as a practical matter, the Commission's program access and anti-discrimination rules are working. The exhibit submitted with the comments of CSS, et al. shows a number of significant reductions and virtually no increases in the rates to HSD packagers since adoption of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). Further, CSS, et al., as promised in their comments and a prior ex parte submission,³ appear to be pursuing any disagreements through the complaint process, and CSS has "resolved all issues involved" in its initial complaint without this supposedly necessary additional "incentive." See Consumer Satellite Systems, Inc., CSR-4246-P, DA 94-705 (rel. June 27, 1994).

In any event, the Commission properly concluded that the 1992 Cable Act did not grant it "the authority to assess

² In extensive comments and reply comments filed in MM Docket No. 92-265 on January 25 and February 16, 1993, CSS never sought the remedies of damages or retroactive rate rollbacks. Instead, CSS urged the Commission, if the evidence in a complaint proceeding supported such rates, "to expeditiously require the imposition of equal or near equal rates." CSS Comments in MM Docket No. 92-265, filed Jan. 25, 1993, at 17. Of course, that is the remedy essentially adopted by the Commission in 47 C.F.R. §76.1003(s)(1), i.e. "the establishment of prices, terms, and conditions for the sale of programming to the [complainant]" and a "timetable for compliance."


³ We understand that CSS and "several other HTVRO packagers" represented by counsel for CSS, et al. made an ex parte submission to the Commission on or about May 24, 1994 on these issues. Southern expects to respond to that submission in accordance with the Commission's ex parte rules.

damages against the programmer or the cable operator" for violations of the program access provisions of the 1992 Cable Act or the Commission's Rules implementing those provisions. Report and Order at ¶81. Further, the Commission has determined that complainants need not "make a threshold showing that they have suffered harm as a result of the proscribed conduct." Id. at ¶12. Clearly, an award of damages, attorneys' fees or other costs would be incongruous and inappropriate where the complainant need not show that it has been injured in any way by the defendant's conduct.

In short, rather than providing information requested for the Commission's Report to Congress, CSS, et al. attempt to reargue the Commission's prior findings and to support a pending petition for reconsideration -- all based on unsupported and inaccurate assertions. Southern respectfully submits that HSD packagers, including CSS, et al., are receiving non-discriminatory access to programming.

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Respectfully submitted,


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